

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)	
)	
Advanced Methods to Target and Eliminate)	WC Docket No. 17-59
Unlawful Robocalls)	

Comments of the Credit Union National Association

The Credit Union National Association (“CUNA”), by and through its counsel, submits these comments in response to the *Second Notice of Inquiry* released by the Federal Communications Commission (“Commission”) on July 13, 2017.¹ CUNA welcomes the Commission’s initiative to establish a comprehensive resource to identify telephone numbers that have been reassigned. Calling a reassigned number not only aggravates the recipient, but constitutes a waste of time and resources for callers seeking to provide important and relevant information to intended recipients. CUNA thus supports the establishment of a centralized, Commission-supervised database to which all voice providers should be required to report reassigned numbers.

Background

Serving America’s credit unions and their 110 million members, CUNA is the nation’s largest credit union association. Credit unions are tax-exempt nonprofit, member-owned institutions. As financial cooperatives, their members are also owners and have voting rights in electing those setting policy and making decisions for the credit union. Communication between

¹ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, GC Docket No. 17-59, FCC 17-90 (rel. July 13, 2017) (“*Second Notice*”).

the credit union and its members is critical given the important role credit union member-owners play in the organization. Credit unions communicate not only crucial, time-sensitive financial-related information such as account balances or overdrafts, security breaches and fraud alerts, and debt default avoidance or resolution, but also information about credit union governance and voting issues. In short, credit union communications are mostly informational and the target audience consists of credit union member-owners.

Despite the limited, informational nature of their communications, credit unions nonetheless find themselves the target of TCPA litigation. A recurring concern is reassigned numbers. Like telephone consumers generally, credit union members frequently change their contact numbers that were provided to the credit union, and do not necessarily think to immediately inform the credit union of the change. The credit union may then call the number to provide information without any knowledge that the number has been reassigned, potentially exposing it and its member-owners to liability. CUNA and its members are thus keenly interested in this proceeding.

I. The Development of a Database is Laudable, But Cannot Substitute for Rectifying the Current Unreasonable Reassigned Numbers Rules

The Commission's *Second Notice* reflects the scale of the reassigned numbers problem by noting that some 35 million numbers are reassigned each year and that approximately 100,000 wireless numbers are reassigned each day.² There currently is no comprehensive, accurate, up-to-date resource by which callers can timely and with confidence discern whether a number has been reassigned. As a result, callers can, and sometimes do, unwittingly reach current subscribers of the reassigned number rather than the intended recipient, putting callers at risk for expensive class action litigation and always resulting in a waste of resources. The exposure to

² *Second Notice* at ¶ 5.

potential liability is having a chilling effect on the ability of credit union members to receive informational messages that they need for their financial well-being.

Although an appropriately structured database can help to alleviate the reassigned numbers problem, the eventual establishment of a technical solution should not be viewed as a substitute for promptly revising the current misguided reassigned numbers rules. As Chairman Pai and Commissioner O’Rielly recognize, the Commission’s current rules have greatly exacerbated the reassigned numbers problem by inappropriately defining the called party as the current subscriber, rather than the intended or expected recipient, and by adopting an impracticable, one-call “safe harbor.”³ Establishing a database solution is laudable, but it will take time, even on an accelerated schedule. In the meantime, the Commission quickly must restore a reasonable balance between consumers’ privacy and the ability of good-faith actors to communicate important information to their consumers without being penalized for unknowingly calling a reassigned number. The current legal framework for reassigned numbers is not fair or sustainable, and should not be left unaddressed until a database solution is implemented.

II. The Commission Should Establish a National FCC-Supervised Database that is Comprehensive, Readily Accessible, Timely and Affordable

CUNA supports the establishment of a centralized, FCC-supervised database to which all voice providers with access to numbers should report. Providers should submit telephone numbers to the database that have been disconnected and classified as aging and should update the database in real time, to the extent practicable. Use of the database should be restricted to TCPA compliance. Access to any reassigned numbers database must also be affordable. Callers

³ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act*, 30 FCC Rcd, 7961, 8078 (2015) (2015 TCPA Order) Dissenting Statement of Commissioner Ajit Pai (“Interpreting the term ‘called party’ to mean the expected recipient – that is, the party expected to answer the call – is by far the best reading of the statute.”); *id.* at 8090, Dissenting Statement of Commissioner Michael O’Rielly (one call safe harbor constitutes “fake relief instead of a solution”).

should have free access to such a database to the same extent that access to the national do not call registry is free. To the extent payment is required, callers should be able to access a subset of numbers or the entire database and fees should be structured accordingly.

The FCC Should Establish a Centralized FCC-Supervised Database

The Commission has substantial experience developing numbering databases that can inform its determinations regarding the creation of a reassigned numbering resource. CUNA believes that a national database under the auspices of the Commission and operated by a Commission-designated and supervised entity would best guarantee accurate and timely information on reassigned numbers. CUNA concurs with the Commission's assessment that such an approach would allow the agency to oversee quality, appropriately limit access and preserve and protect the data.⁴ This model has been successfully utilized by the Commission for number portability and by it and the Federal Trade Commission in creating and maintaining the national do not call registry.

Access to the Database Must be Affordable

As with the national do not call registry, the Commission should recognize that not all callers need access to a full, nationwide database. All credit unions are smaller financial institutions than the largest financial services providers, and they often serve a regional or local consumer base. Many are very small businesses. In the United States, nearly half of all credit unions, 2,708 out of approximately 6,000 credit unions, have five or fewer full time employees; more than half (2,614) have assets of less than \$20 million, and 3,754 have assets of less than \$50 million. They do not need access to a national list, and therefore, any fee imposed on them for access to the database should be commensurate with the limited portion of the database they

⁴ *Second Notice* at ¶ 16.

need.⁵ The Commission endorsed a fee structure for access to the do not call registry that considered the needs of organizations conducting business on a regional, state or local level.⁶ The Commission should adopt a similar structure for any reassigned number database. Moreover, as with the do not call registry, the reassigned number database should contain a single number look up feature.⁷

The Commission should also provide free access to any reassigned numbers database to the same extent that free access is provided to the national do not call registry. Callers that operate as a tax-exempt nonprofit organization are provided free access to the national do not list, as are those that make only informational calls and have an established business relationship.⁸ Credit unions operate as tax-exempt nonprofit organizations under the IRS code and attempt to provide informational messages only to their members with whom they clearly have an established business relationship.⁹

All Voice Providers with Access to Numbers Should Report to the Database

To ensure comprehensive information about all reassigned numbers, all voice service providers that have obtained numbers and are required to submit number utilization information should be required to submit information to the database. Anything short of involvement by all

⁵ Users of the do not call registry pay a per area code fee (to be set at \$62 per area code with a cap of \$17,021 beginning in FY 2018) with the first five area codes free. *See, e.g.,* Telemarketer Fees to Access Do Not Call Registry to Rise Slightly in 2018, Aug. 14, 2017, <https://www.ftc.gov/news-events/press-releases/2017/08/telemarketer-fees-access-ftcs-do-not-call-registry-rise-slightly>.

⁶ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14048-49, ¶ 54 (2003) (*2003 TCPA Order*).

⁷ *2003 TCPA Order*, 18 FCC Rcd at 14048-49, ¶ 54.

⁸ The Federal Trade Commission rules provide free access to the do not call registry for entities that qualify as “exempt organizations,” including certain tax-exempt nonprofit organizations, entities that do not make telemarketing calls or those that only contact their own customers. *See* National Do Not Call Registry, Information for Businesses, <https://www.donotcall.gov/faq/faqbusiness.aspx#payforAccess>. *See also*, *2003 TCPA Order*, 18 FCC Rcd at 14044, ¶¶ 42-45.

⁹ *See* 26 U.S.C. § 501(c)(1) (exempting federal credit unions under the supervision of the National Credit Union Association); *id.* at § 501(c)(14)(A) (exempting credit unions chartered under state credit union laws that operate without profit).

voice providers that have access to numbers would invite continued mistaken calling to reassigned numbers and undermine callers' confidence in the database.

Submitting information on reassigned numbers should not be overly burdensome. Voice providers are already required to report on number utilization, including placing numbers into defined categories that reflect their status.¹⁰ Voice providers thus already track when numbers are disconnected and designated as "aging" or "assigned" or "available."¹¹

Service Providers Should Report Disconnected "Aging" Numbers in Real Time

Service providers should update the database whenever a number is disconnected and classified as aging pursuant to the Commission's numbering rules.¹² Once a number has been disconnected and classified as aging, the caller would know that the consumer can no longer be reached at that number and that dialing that number would be futile. Waiting until the number has been classified as available or assigned and once again in use may be too late to avoid inadvertent calls, especially if there is any lag in updating the database.

To help protect consumer privacy, voice providers should only submit the telephone number and no other information. In the context of the do not call registry, the Commission has recognized that limiting database information to just the telephone number best protects consumers' privacy.¹³

¹⁰ The Commission's numbering rules require all telecommunications carriers that receive numbers to report on number utilization. 47 C.F.R. § 52.15(f). Voice over Internet Protocol providers that obtain numbers directly must also report on number utilization. *Id.* at § 52.15(g)(3).

¹¹ See 47 C.F.R. § 52.15(f) (1)(providers must classify numbers in one of several categories including "aging numbers" which "are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time.").

¹² See 47 C.F.R. § 52.15(f).

¹³ 2003 TCPA Order, 18 FCC Rcd at 14037, ¶ 32.

III. The Commission Should Create a Workable Safe Harbor

The adoption of a safe harbor from liability for callers that use the reassigned number database is critically important. CUNA concurs with the statement of Commissioner O’Rielly that “a properly constructed compliance safe harbor” must be part of any database solution.¹⁴ There is ample precedent for the adoption of a reasonable safe harbor in the numbering context. The Commission established a safe harbor for autodialed calls to numbers recently ported from landline to wireless service in light of the difficulty in determining immediately that a port has occurred.¹⁵ The Commission also agreed with the Federal Trade Commission that callers making a good faith effort at compliance “should not be liable for violations that result from an error.”¹⁶ The agencies thus established a safe harbor for telemarketers that accessed the do not call registry.

The establishment of a workable safe harbor is particularly appropriate for America’s credit unions. As noted above, credit union communications with their member-owners are mostly informational in nature, often providing critically important financial information, and can include information related to the governance of the credit union. Credit unions do not target non-members or third parties with such communications. Credit unions should not have to fear potential liability if they have demonstrably used the reassigned number database yet mistakenly call a reassigned number.

Conclusion

For the reasons stated herein, CUNA supports the Commission’s initiative to create a reassigned number database and urges the Commission to establish a workable safe harbor for

¹⁴ *Second Notice*, Statement of Commissioner Michael O’Rielly.

¹⁵ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection of 1991*, Order, 19 FCC Rcd 19215, 19218-19, ¶¶ 7-9 (2004); 47 C.F.R. § 64.1200(a)(1)(iv).

¹⁶ *2003 TCPA Order*, 18 FCC Rcd at 14040, ¶ 38; 47 C.F.R. §64.1200(c)(2).

entities that use the database. In the meantime, CUNA urges the Commission promptly to revise the current reassigned numbers rules.

Respectfully submitted,

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